

FILED

JUL 25 2017

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CLIFFORD D. OLD-HORN,

Plaintiff,

vs.

DETECTIVE MIKE SARGEANT,
DETECTIVE JAY DOYLE, and
COUNTY ATTORNEY MITCH YOUNG,

Defendants.

CV 16-00099-M-DLC-JCL

FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Before the Court is Defendants' Motion to Dismiss. (Doc. 33.) Defendants represent that the parties reached a settlement agreement in this matter and Plaintiff Clifford Old-Horn signed a release on May 22, 2017. A stipulation of dismissal signed by counsel for Defendants was mailed to Old-Horn on May 23, 2017 but Old-Horn did not file the signed stipulation with the Court and he did not return it to counsel for Defendants. Defendants represent that Old-Horn cashed the settlement check on June 5, 2017.

Counsel for Defendants has not been able to reach Old-Horn and mail sent from the Court to Old-Horn on May 10, 2017 was returned as undeliverable. Old-Horn did not respond to Defendants' motion to dismiss.

The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The Court may dismiss a complaint without prejudice or strike an answer when:
 - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and
 - (2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.

L.R. 5.2(b). The Court's May 8, 2017 Order was mailed to the address provided in Old-Horn's May 10, 2017 Notice of Change of Address (Doc. 31) on May 10, 2017. It was returned as undeliverable on May 16, 2017. (Doc. 32.) Within the following 60-day period, and as of the date of this recommendation, Old-Horn has not provided the Court with a written notice informing it of his change of address.

In addition, it appears that this matter has been settled.

Therefore, IT IS HEREBY RECOMMENDED that Defendants' Motion to Dismiss (Doc. 33) be GRANTED and this matter DISMISSED WITH PREJUDICE. Defendants' request for costs should be DENIED.

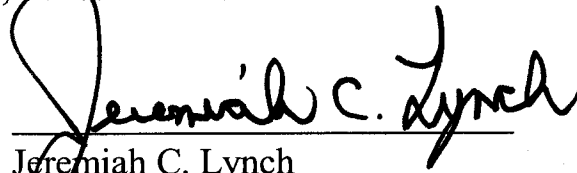
**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 25th day of July, 2017.


Jeremiah C. Lynch
United States Magistrate Judge

¹As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.